



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sealcraft Corporation

File: B-236774.2

Date: December 26, 1989

DIGEST

Where bidder, under several previous contracts, had satisfactorily supplied the government with engine components similar to the component being solicited, the contracting officer did not act in bad faith in making an affirmative determination that the bidder was responsible.

DECISION

Sealcraft Corporation protests the award of a contract to Ducarra Aviation Inc., for certain engine gasket sets for PE150 series Packette engines, under solicitation No. F41608-88-R-8184, issued by the Air Force. Sealcraft asserts that the Air Force acted in bad faith in determining that Ducarra was responsible. We deny the protest.

The gist of Sealcraft's protest is that Ducarra should not be considered as a source for the part in question because Ducarra does not have authentic technical data, and is not a manufacturer of the Packette gaskets. Sealcraft contends that the contracting officer acted in "bad faith" in assessing Ducarra, because he relied on outdated correspondence from the original equipment manufacturer (OEM), which recommended Ducarra to the government as a source of "attachment hardware" for the Packette engine, not for internal replacement parts such as the gasket kit at issue.

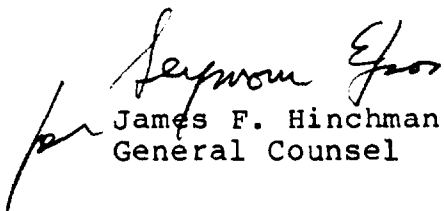
First, we note that the solicitation listed Ducarra as one of several previously identified sources for the gaskets. Under our Bid Protest Regulations, a protest based on an alleged apparent solicitation impropriety must be filed prior to bid opening or the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1989). Sealcraft's protest was initially untimely filed with the contracting agency after award and, therefore, to the extent that Sealcraft is protesting the Air Force's determination that Ducarra is an approved source for the gaskets,

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Sealcraft's subsequent protest to our Office is also untimely. 4 C.F.R. § 21.2(a)(3).

To the extent that Sealcraft's protest simply concerns the contracting officer's affirmative determination of Ducarra's responsibility, to show that a responsibility determination was made in bad faith the protester has a heavy burden of proof. Procurement officials are presumed to act in good faith, and, in order to show otherwise, a protester must submit virtually irrefutable proof that the procurement officials acted with specific and malicious intent to harm the protester. Baldt, Inc., B-235102, May 11, 1989, 89-1 CPD ¶ 445. Here, Sealcraft's bad faith allegation consists of nothing more than an assertion that the contracting officer misinterpreted old information from the OEM in finding Ducarra responsible. Such a misinterpretation would not constitute bad faith. Moreover, the contracting officer had before him information that Ducarra had reliably supplied similar Packette engine components to the government under numerous contracts, as well as evidence that the OEM had recommended Ducarra as a supplier of parts for the Packette engine. Accordingly, the contracting officer had a reasonable basis for his responsibility determination, and there is nothing in the record to suggest that the contracting officer acted other than in good faith.

Protest denied.


James F. Hinchman
General Counsel